

APPEAL NO. 021775
FILED AUGUST 22, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 10, 2002. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on _____, and that she did not sustain resultant disability. In addition, the hearing officer determined that the respondent (carrier) was relieved of liability because the claimant failed to timely report her alleged injury pursuant to Section 409.001, and that the carrier did not waive its right to contest compensability because it did timely contest the claimant's injury.¹ The claimant appealed on sufficiency grounds, and the carrier responded, requesting affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury to her low back on _____. The claimant testified that she hurt her low back, and had pain in her right leg, while she was lifting a box of coins weighing between 20 and 40 pounds. The carrier argued that the claimant did not describe her injury as work-related until after she had been demoted for an unrelated reason. The medical records are conflicting with respect to cause or mechanism of injury, all based upon the claimant's history given. The hearing officer did not find the claimant credible.

The hearing officer did not err in determining that the carrier was relieved of liability pursuant to Section 409.002 due to the claimant's failure to timely notify her employer pursuant to Section 409.001. There was conflicting testimony regarding both the alleged date of injury [giving rise to the newly discovered evidence issue] and the alleged date of the claimant's notice to her employer.

The hearing officer did not err in determining that the carrier did not waive its right to contest the compensability of the claimant's alleged injury by not timely filing its dispute, the TWCC-21, within 60 days of the employer's receipt of written notice of the claimant's injury. The evidence, as decided by the hearing officer, showed that the employer first received written notice of the claimant's alleged injury on either January 10 or 30, 2002. It is undisputed that the carrier filed its TWCC-21 February 25, 2002, well within 60 days of either date of claimant's written notice to her employer.

¹ This issue was framed in terms of "newly discovered evidence," but there was no newly discovered evidence as the employer received its written notice of injury either on _____ or _____, and the carrier filed its Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) on February 25, 2002, well within 60 days of either date.

The hearing officer is the sole judge of the weight and the credibility to be given the evidence. Section 410.165(a). The hearing officer resolved the disputed issues in the carrier's favor. While the claimant argued a different interpretation of the evidence, we conclude that the hearing officer's determinations are supported by the evidence, and that they are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 001360, decided July 27, 2000.

Because we affirm the hearing officer's compensability determination, we likewise affirm his disability determination. As a matter of law, the claimant must have a compensable injury in order to have disability. See Section 401.011(16).

The hearing officer's decision and order are affirmed.

The official name of the carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**GARY SUDOL
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Roy L. Warren
Appeals Judge